

REMARKS

1. Introduction. Claims 1-30 are in the case. Claims 20-30 have been allowed. Claims 6, 12, 13, and 19 would be allowable if rewritten in independent form.

Pursuant to a telephone interview held between the Examiner and the undersigned attorney on May 25, 2005, claims 1, 8, and 14 have been amended in this response. Applicant believes that the amendments to claims 1, 8, and 14 overcome the objections advanced by the Examiner. Therefore, Applicant respectfully requests that a Notice of Allowance be issued at the earliest convenience.

2. 34 U.S.C. §102 Rejection based on Ness. The Examiner rejected claims 1, 3-5, 8-10, 14, 17, and 18 under 35 U.S.C. §102 as being anticipated by U.S. Patent No. 6,371,041 to Ness. The Examiner stated that

Ness discloses a hull with a bow and stern, a fore ballast chamber 62, motor (at 60), an aft ballast chamber 64, pumping means and evacuation means (with the chambers in fluid communication via conduits; note Figure 3, for example), and a dry chamber inside the hull. With respect to the intended use as a hunting vessel, the intended use has been given limited weight because intended use defines no patentable structure. Additionally, the vessel of Ness is capable of being used for hunting.

See Office Action, p. 2. Claims 1, 8, and 14 are independent claims, from which the remaining claims depend.

As explained in response to the office action dated October 29, 2004, Ness is discloses a deep sea submersible (submarine) having a unique system for gliding ascent, gliding descent, and hovering for exploratory or research purposes. The Ness device is

intended for undersea study as opposed to hunting activities. Applicant respectfully submits that a person of ordinary skill in the art would not consult the Ness disclosure in order to arrive at Applicant's invention, nor would he have any incentive to do so.

Applicant's understanding of the Examiner's rejection is that Ness contains pressurized crew quarters, which are indirectly referenced in the specification. These crew quarters can allegedly function as a "dry chamber," as defined by the Applicant in claims 1, 8, and 14. While Applicant disagrees that a person in the crew quarters can "hunt" from within the crew quarters, Applicant has agreed to amend the specification to clarify that the dry chamber is "at least partially exposed to the atmosphere." Applicant believes that this amendment will provide the necessary distinction from Ness, because the crew quarters of Ness, by their nature, cannot be exposed to the atmosphere. Applicant further believes that this amendment to independent claims 1, 8, and 14 cures any remaining objections in the case.

3. 35 U.S.C. §103 Rejection based on Ness and Ernst. The Examiner rejected claims 2, 11, and 15 as unpatentable over Ness in view of U.S. Patent No. 3,638,257 to Ernst, stating that it would have been obvious "to a person of ordinary skill in the art at the time the invention was made to form the device of Ness with camouflaging means as taught by Ernst for improved hunting." As discussed above, Ness does not disclose the present invention. Therefore, Applicant respectfully requests that the Examiner reconsider this rejection.

4. 35 U.S.C. §103 Rejection based on Ness and Baughman. Claim 7 was rejected as being unpatentable over Ness in view of U.S. Patent No. 4,828, 520 to Baughman. The examiner stated that “it would have been obvious to a person of ordinary skill in the art . . . to form the ballast means of Ness with a baffle as taught by Baughman et al for improved stability.” As discussed above, Ness does not disclose the elements of the present invention. Therefore, the combination of Ness and Baughman do not disclose Applicant’s invention as set forth in claim 7, and Applicant respectfully requests that the Examiner reconsider this rejection.

5. 35 U.S.C. §103 Rejection based on Ness and Rizley. Claim 16 was rejected under 35 U.S.C. §103 as being unpatentable over Ness in view of U.S. Patent No. 4,938,722 to Rizley. The Examiner stated that “it would have been obvious . . . to form the motor of Ness to be vertically adjustable as taught by Rizley for improved stability and direction control.” As discussed above, Ness does not disclose the elements of the present invention. Therefore, the combination of Ness and Rizley do not amount to Applicant’s invention as set forth in claim 16.

6. Summary of Interview. On May 25, 2005, the undersigned counsel and Examiner Stephen Avila held a phone conference to discuss the latest office action. Undersigned counsel asked for clarification concerning the rejection based on Ness. The Examiner indicated that the “dry chamber” of Applicant’s invention, as disclosed in claims 1, 8, and 14, is disclosed in the crew quarters or crew chambers of Ness. The Examiner further stated

that Ness could be used to "hunt" undersea animals by chasing or stalking same. The Examiner further stated that an amendment specifying further structure to the dry chamber may put the rejected claims in condition for allowance. Undersigned counsel suggested amending claims 1, 8, and 14 to further specify that the dry chamber is "at least partially exposed to the atmosphere." The Examiner indicated that such an amendment may place the remaining claims in condition for allowance.

7. Conclusion. Based on the above amendments and remarks, I believe that all of the claims in the case are allowable and an early Notice of Allowability is respectfully requested. If the Examiner believes that a telephone conference will expedite the disposition of this matter, he is respectfully invited to contact this attorney at the number shown below.

Respectfully submitted,



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EXAMINER: Stephen P. Avila

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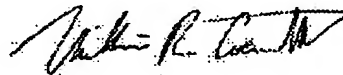
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May 26, 2005

Date

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